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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BACKGRID USA, INC., a California
corporation,

Plaintiff,

v.

FASHION NOVA, INC.,

Defendant.

Case No. 2:19-cv-01476

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND FOR
REMOVAL OF COPYRIGHT
MANAGEMENT INFORMATION**

DEMAND FOR JURY TRIAL

Plaintiff, BackGrid USA, Inc. (“BackGrid”) complains against Defendant Fashion Nova, Inc. (“Fashion Nova”) as follows:

JURISDICTION AND VENUE

1. This is a civil action for copyright infringement under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*; and for removal of copyright management information, 17 U.S.C. § 1202. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1332, 17 U.S.C. § 501(a), and 28 U.S.C. § 1338(a) and (b).

2. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(a) in that the claim arises in this judicial district, Fashion Nova may be found and transacts business in this judicial district, and the injury BackGrid suffered

1 took place in this judicial district. Fashion Nova is subject to the general and specific
2 personal jurisdiction of this Court because of its contacts with the State of California.

3 **PARTIES**

4 3. BackGrid is a California corporation existing under the laws of California,
5 with its principal place of business located in Redondo Beach, California.

6 4. BackGrid alleges on information and belief that Defendant Fashion Nova is
7 a California corporation with its principal place of business at 2801 E 46th Street, Vernon,
8 CA 90058.

9 **FACTS COMMON TO ALL COUNTS**

10 *BackGrid and the Relevant Copyrighted Photographs*

11 5. BackGrid owns and operates one of Hollywood's largest celebrity-
12 photograph agencies and has earned a reputation of regularly breaking scoops on sought
13 after celebrity news. It owns the intellectual property rights, including the copyrights, to
14 celebrity photographs that have been licensed to numerous top-tier outlets, such as TMZ,
15 Entertainment Tonight, New York Post, People Magazine, Huffington Post, the Daily
16 Mail, as well as many television stations, newspapers and other prominent media outlets
17 throughout the world. Each license has been granted for valuable consideration, up to
18 hundreds of thousands of dollars.

19 6. Among many other in-demand photographs, BackGrid owns photographs of
20 well-known celebrities such as Kourtney Kardashian, Blac Chyna, Amber Rose, and 21
21 Savage.

22 7. A copy of BackGrid's Copyright Registration Number VA0002069876, for a
23 collection of photographs of Amber Rose and 21 Savage, is attached as Exhibit A.

24 8. A copy of the deposit copy submitted in connection with the application for
25 Registration Number VA0002069876 is attached as Exhibit B.

26 9. A copy of BackGrid's Copyright Registration Number VA0002078339, for
27 a collection of photographs of Blac Chyna, is attached as Exhibit C.

28 10. A copy of the deposit copy submitted in connection with the application for

1 the Registration Number VA0002078339 is attached as Exhibit D.

2
3 11. A copy of BackGrid's Copyright Registration Number VA0002062268, for
4 a collection of photographs of Kourtney Kardashian, is attached as Exhibit E.

5 12. A copy of the deposit copy submitted in connection with the application for
6 the Registration Number VA0002062268 is attached as Exhibit F.

7 13. A copy of BackGrid's Copyright Registration Number VA0002069872, for
8 a collection of photographs of Amber Rose and 21 Savage, is attached as Exhibit G.

9 14. A copy of the deposit copy submitted in connection with the application for
10 the Registration Number VA0002069872 is attached as Exhibit H.

11 *Defendant and Its Willful Infringing Activity*

12 15. BackGrid alleges on information and belief that Fashion Nova is an online
13 and "brick and mortar" apparel retailer. On its website, Fashion Nova boasts that "Nova
14 Style" means "breaking the rules" – and apparently those "rules" include those
15 prohibiting infringement of others' intellectual property rights.

16 16. Through its various media outlets, Fashion Nova posted online copies of
17 each of the copyrighted photos reflected in Exhibits A through H. Copies of the
18 infringing posts are attached as Exhibits I through L.

19 17. Fashion Nova did not seek or obtain a license with respect to any of the
20 copyrighted works it appropriated for itself.

21 18. BackGrid first put Fashion Nova on notice of its infringing activity in
22 October 2017 with respect to the copyright registration attached as Exhibit A. Not only
23 did Fashion Nova fail to resolve the infringement, since that time it infringed the
24 registrations attached as Exhibits C, E, and G. Each of the four infringements of which
25 BackGrid is aware were willful, and BackGrid expects to find evidence of additional
26 infringements as discovery proceeds in this matter.

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FIRST CLAIM FOR RELIEF**(Infringement of Copyright Registration Number VA0002069876)**

19. BackGrid repeats, realleges, and incorporates by reference the allegations of paragraphs 1 through 18 of this Complaint as though set forth fully here.

20. BackGrid owns all rights, title, and interest in and to the copyright registration attached as Exhibit A, consisting of material that is original and copyrightable under the laws of the United States.

21. Fashion Nova has directly, vicariously, contributorily and/or by inducement willfully infringed BackGrid's copyrights by reproducing, displaying, distributing, and using certain of BackGrid's copyrighted photographs, as evidenced by Exhibit I.

22. Fashion Nova used the copyrighted work without BackGrid's permission, license, or consent.

23. Fashion Nova's willful infringement damaged BackGrid in an amount according to proof, and at a minimum BackGrid is entitled to statutory damages of up to \$150,000.

SECOND CLAIM FOR RELIEF**(Infringement of Copyright Registration Number VA0002078339)**

24. BackGrid repeats, realleges, and incorporates by reference the allegations of paragraphs 1 through 18 of this Complaint as though set forth fully here.

25. BackGrid owns all rights, title, and interest in and to the copyright registration attached as Exhibit C, consisting of material that is original and copyrightable under the laws of the United States.

26. Fashion Nova has directly, vicariously, contributorily and/or by inducement willfully infringed BackGrid's copyright by reproducing, displaying, distributing, and using certain of BackGrid's copyrighted photograph, as evidenced by Exhibit J.

27. Fashion Nova used the copyrighted work without BackGrid's permission, license, or consent.

28. Fashion Nova's willful infringement damaged BackGrid in an amount

1 according to proof, and at a minimum BackGrid is entitled to statutory damages of up to
2 \$150,000.

3 **THIRD CLAIM FOR RELIEF**

4 **(Infringement of Copyright Registration Number VA0002062268)**

5 29. BackGrid repeats, realleges, and incorporates by reference the allegations of
6 paragraphs 1 through 18 of this Complaint as though set forth fully here.

7 30. BackGrid owns all rights, title, and interest in and to the copyright
8 registration attached as Exhibit E, consisting of material that is original and copyrightable
9 under the laws of the United States.

10 31. Fashion Nova has directly, vicariously, contributorily and/or by inducement
11 willfully infringed BackGrid's copyright by reproducing, displaying, distributing, and
12 using certain of BackGrid's copyrighted photograph, as evidenced by Exhibit K.

13 32. Fashion Nova used the copyrighted work without BackGrid's permission,
14 license, or consent.

15 33. Fashion Nova's willful infringement damaged BackGrid in an amount
16 according to proof, and at a minimum BackGrid is entitled to statutory damages of up to
17 \$150,000.

18 **FOURTH CLAIM FOR RELIEF**

19 **(Infringement of Copyright Registration Number VA0002069872)**

20 34. BackGrid repeats, realleges, and incorporates by reference the allegations of
21 paragraphs 1 through 18 of this Complaint as though set forth fully here.

22 35. BackGrid owns all rights, title, and interest in and to the copyright
23 registration attached as Exhibit G, consisting of material that is original and
24 copyrightable under the laws of the United States.

25 36. Fashion Nova has directly, vicariously, contributorily and/or by inducement
26 willfully infringed BackGrid's copyright by reproducing, displaying, distributing, and
27 using certain of BackGrid's copyrighted photographs, as evidenced by Exhibit L.

28 37. Fashion Nova used the copyrighted works without BackGrid's permission,

license, or consent.

38. Fashion Nova's willful infringement damaged BackGrid in an amount according to proof, and at a minimum BackGrid is entitled to statutory damages of up to \$150,000.

FIFTH CLAIM FOR RELIEF

(Removal of Copyright Management Information)

39. BackGrid repeats, realleges, and incorporates by reference the allegations of paragraphs 1 through 18 of this Complaint as though set forth fully here.

40. Each of the copyrighted photos that is a subject of this action contained information regarding the author and/or copyright owner of that work. That information is "copyright management information" pursuant to 17 U.S.C. § 1202(c).

41. When posting or causing to be posted the infringing photographs attached as Exhibit I through L, Fashion Nova removed all copyright management information. BackGrid alleges on information and belief that Fashion Nova engages in a pattern and practice of removing others' copyright management information, knowing that this activity is and was unlawful.

42. BackGrid alleges on information and belief that Fashion Nova removed and altered copyright management information willfully and with full knowledge and disregard of BackGrid's rights. Fashion Nova used the copyrighted works without BackGrid's permission, license, or consent.

43. Fashion Nova's willful conduct damaged BackGrid in an amount according to proof, and at a minimum BackGrid is entitled to statutory damages of up to \$25,000 for each photograph as to which it removed or altered copyright management information.

44. BackGrid also is entitled to recover its attorneys' fees and costs incurred in connection with Fashion Nova's removal and alteration of copyright management information.

PRAYER FOR RELIEF

Therefore, BackGrid requests judgment against Fashion Nova as follows:

1. That Fashion Nova, and its officers, agents, servants, employees, and representatives, and all persons in active concert or participation with them, be permanently enjoined from copying, reproducing, displaying, promoting, advertising, distributing, or selling, or any other form of dealing or transaction in, any and all of the copyrighted photographs that are the subject of this action;

2. That Fashion Nova be ordered to account for all profits, income, receipts or other benefits it derived from the unlawful reproduction, copying, display, promotion, distribution, or sale of products and services, or other media, that improperly or unlawfully infringe the asserted copyrights pursuant to 17 U.S.C. §§ 504 (a)(1) & (b);

3. For actual damages and disgorgement of all profits Fashion Nova derived from its copyright infringement, under 17 U.S.C. §§ 504 (a)(1) & (b);

4. For statutory damages for copyright infringement, including willful infringement, in accordance with 17 U.S.C. §§ 504(a)(2) & (c);

4. For actual damages, disgorgement of profits, or statutory damages for Fashion Nova's removal and alteration of copyright management information pursuant to 17 U.S.C. § 1203(c);

5. For reasonable attorneys' fees pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203(b);

6. For costs and interest pursuant to 17 U.S.C. §§ 504 (a)(1) & (b), 17 U.S.C. § 505, and 17 U.S.C. § 1203(b); and

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7. For such other and further relief that the Court deems just and proper.

DATED: February 28, 2019

Tucker Ellis LLP

By: /s/ Brian K. Brookey

Brian K. Brookey
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Attorneys for Plaintiff BACKGRID
USA, INC.

DEMAND FOR JURY TRIAL

Plaintiff BackGrid USA, Inc. demands trial by jury of all issues so triable under the law.

DATED: February 28, 2019

Tucker Ellis LLP

By: /s/ Brian K. Brookey

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USA, INC.